

Supreme Court of the United States

October Term, 1940

No. 559

MAUD S. WILLIAMS,

*Petitioner,*

*against*

NEW JERSEY-NEW YORK TRANSIT COMPANY.

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Petition for Writ of Certiorari to the United States  
Circuit Court of Appeals for the Second Circuit  
and Brief in Support of Petition

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BREED, ABBOTT & MORGAN,  
*Counsel for Petitioner,*

By CHARLES H. TUTTLE.

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## **Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit and Brief in Support Thereof**

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*To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:*

### **Summary Statement of Matter Involved**

Plaintiff obtained a judgment of the United States District Court for the Southern District of New York awarding her damages in the sum of \$7,373.41. The case was tried before Judge Coxe and a jury. The Circuit Court of Appeals reversed the judgment and dismissed the complaint (113 Fed. [2d] 649).

The action was to recover damages for severe personal injuries sustained by the plaintiff when hit on the head by a heavy briefcase or valise which fell from a baggage rack in the defendant's bus.

The defendant was an interstate common carrier. The accident happened in New Jersey. The plaintiff was on a trip in the bus from New Jersey to New York.

It was established by the defendant's own proofs and exhibits (see photographs, Defendant's Exhibits B and C, and photoprint, Defendant's Exhibit H, pp. 299, 301, 303) that this baggage rack was constructed of slender metal bars with spaces two and one-half inches wide between the longitudinal bars at the bottom of the baggage rack and a space of three and one-quarter inches between the two longitudinal bars at the side of the baggage rack. It was shown that the rack was completely unprotected by wire netting or other guard to prevent baggage falling from between the bars or over the edge as the moving bus swayed and jogged.

At the defendant's own request both the bus and the baggage rack were physically examined by the Court and by the jury (596-7).

The complaint charged that this flimsy baggage rack with wide spaces between its bars and without guards to prevent baggage from falling was unsuitable and imprudent, and that the operation of the bus with the likelihood of baggage becoming dislodged under these conditions constituted negligence (18-22). The defendant's answer admitted (26-7):

“Defendant had and reserved to itself control of all parts of said bus and particularly the baggage racks which were used in common by all the passengers.”

The trial court adopted and charged verbatim every one of the defendant's requests to charge (876-880). Indeed, the issue left by the court to the jury was put by the court in the very language of the defendant's third request to charge (858); and, in expanding thereon, the court instructed that the following was the factual issue (877-9):

"The question is a question of negligence, and negligence is the failure to use reasonable care; and the standard, which I have not stated, but I assumed it was known to every member of the jury, is that of what a reasonable person in similar or like circumstances would do. \* \* \* The question is naturally whether in the exercise of reasonable care anything in connection with this baggage rack could reasonably be anticipated by the defendant in this case, or was reasonably anticipated or should have been reasonably anticipated.

Mr. Land: The question of foreseeability.

The Court: Yes. I will also charge—well, it is the same thing. I had not seen this language. It is probably much better than I have used.

'This whole case must be considered in the light of what might reasonably have been foreseen before the alleged incident, and not from the standpoint of what anyone might consider should have been done or might have been done after the event.'

All that means is that you should apply this standard of care of this reasonably prudent person which we sometimes describe in a frivolous way as perhaps a mythical person. In other words, you should use that standard of the reasonably prudent person in similar or like circumstances."

The Trial Court also left it to the jury to say whether or not the accident was due to the fact that the owner of the brief case ~~had~~ "placed it improperly" in the rack. *not have* The jury's verdict must be taken as finding that it had not been improperly placed.

There was no evidence from either side as to whether or not this type of rack was in common use by bus companies in New Jersey.

The Circuit Court of Appeals reversed and dismissed the complaint. The Circuit Court of Appeals conceded:

"The bus had been swerving and twisting so violently that the plaintiff had been several times thrown against her fellow passengers; and a jury might properly have found that this caused the brief case to fall."

But the Circuit Court of Appeals rejected the principle of foreseeability on which the trial court had based its aforesaid charge to the jury. It held that the New Jersey law applied; it cited certain New Jersey decisions; and then it concluded as follows:

"From these decisions we do not see how we can avoid concluding that in New Jersey a passenger in order to recover because of a defect in the equipment of a common carrier—though not because of a defect in its operation—must show that the carrier diverged from some standard which has been in general use in equipment of the kind or at least that the construction is unusual. When the evidence leaves both issues at large, the carrier apparently may provide what it thinks best, and a jury is not allowed to fix another standard."

### **Reasons Relied Upon for the Allowance of the Writ**

This case presents matters of great and general public importance relating to the obligations of common carriers (particularly bus companies) engaged in interstate commerce, with respect to the standard of care and foresight required of them in the adoption of devices and appliances in their vehicles and offered to the public for its use.

Unless the decision of the Circuit Court of Appeals is reversed, the gravest public consequences will attach. The result will be to establish the lowest possible standard of care for common carriers.

The bases for the present application are:

- (a) The decision of the Circuit Court of Appeals is erroneous.
- (b) It completely misconstrues and misreads the decisions of the New Jersey courts.
- (c) It is in direct conflict with the decisions of the highest courts of the State of New Jersey.

(d) It is in direct conflict with decisions of the United States Supreme Court.

(e) It establishes a discriminatory rule in favor of common interstate carriers and fixes a lower standard of liability for them than for private individuals. It annuls the common carrier's familiar obligation and the public policy out of which that obligation has grown, and does so in a case where the carrier itself by its own affirmative act created the conditions of danger inside of its own bus under its own exclusive control.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Second Circuit, commanding that court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a transcript of the record and proceedings herein; and that the said decree of the United States District Court for the Southern District of New York be reversed by this Honorable Court, and that your petitioner have such other and further relief in the premises as to this Honorable Court may seem meet and just.

Dated, Nov. 7, 1940.

Respectfully submitted,

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